

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff/Respondent,	§	
	§	
v.	§	CR. No. C-06-579 (2)
	§	
EUSEBIO CARBAJAL,	§	
Defendant/Movant.	§	

ORDER DENYING MOTION FOR REDUCED SENTENCE

By Order and final judgment entered April 9, 2009, the Court denied Defendant Eusebio Carbajal's ("Carbajal") motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 as time-barred. The Court also sua sponte denied Carbajal a Certificate of Appealability ("COA"). Carbajal subsequently filed a motion that the Court construed as a notice of appeal. (See D.E. 54-56.) He was granted leave to proceed on appeal *in forma pauperis* (D.E. 58-59), but the Fifth Circuit dismissed his appeal on September 30, 2009 for want of prosecution. (D.E. 62.) Specifically, Carbajal failed to timely file a motion for certificate of appealability and a brief in support. (D.E. 62.)

Days before Carbajal's appeal was dismissed, the Clerk of this Court received from him a motion titled as a "Motion to Reduce or Correct Sentence Pursuant to, 18 U.S.C. § 3582(c)(2), and United States Sentencing Guidelines §1B1.3, and §3B1.2." (D.E. 61.) In it, Carbajal argues that the Court erred in failing to apply a reduction at sentencing for his role in the offense. He contends that he was a minimal participant and thus qualifies for a reduction in his offense level under U.S.S.G. § 3B1.2.

As noted, Carbajal has already filed a § 2255 motion, which was dismissed as time-barred. Notably, he did not raise this claim either on direct criminal appeal or in his § 2255 motion. In any

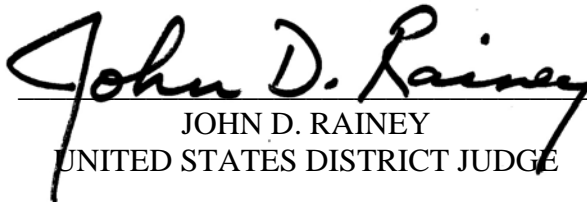
event, Carbajal is asking for relief in the form of a reduced sentence, and this Court is not authorized to grant that relief. Instead, this Court has authority to modify or correct a previously imposed sentence only in the “limited number of circumstances” set out in 18 U.S.C. § 3582(c). United States v. Bridges, 116 F.3d 1110, 1112 (5th Cir. 1997). These circumstances are limited to the following: (1) when the Bureau of Prisons moves the Court to modify the sentence for reasons outlined in § 3582(c)(1); (2) under Fed. R. Crim. P. 35 (on the government’s motion due to substantial assistance or to correct a clerical mistake within seven days of the date the sentence was imposed); and (3) when the guidelines under which the defendant was sentenced have been subsequently lowered, and a modification of sentence is consistent with the guidelines’ policy statements. See § 3582(c). Carbajal fails to assert grounds for modification that fall into any of the categories above. Therefore, the Court does not have authority to alter Carbajal’s sentence.

CONCLUSION

For the foregoing reasons, Carbajal’s motion for a reduction in sentence (D.E. 61) is DENIED.

It is so ORDERED.

Signed this 8th day of October, 2009.


JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE